

## Message Text

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FM SECSTATE WASHDC

TO USMISSION GENEVA FLASH

C O N F I D E N T I A L STATE 253610

FOLLOWING REPEAT STATE 241095 GENEVA ACTION PARIS INFO USUN  
LONDON BONN ROME COPENHAGEN BRUSSELS THE HAGUE DUBLIN LUXEMBOURG  
EC BRUSSELS OECD PARIS 01 NOV 74

QTE

C O N F I D E N T I A L STATE 241095

BONN PASS TO BRADFIELD OF TREASURY

E.O. 11652: GDS

TAGS: UNCTAD, EGEN, FR

SUBJ: CHARTER OF ECONOMIC RIGHTS AND DUTIES: FRENCH  
POSITION

REF: PARIS 25883

1. APPRECIATE REFTEL AND CHOLLET'S VIEWS. CHOLLET,  
INCIDENTALLY, PLAYED VIGOROUS AND HELPFUL ROLE IN RECENT  
GENEVA AND NY CONSULTATIONS ON CHARTER AND, IN EMB'S  
DISCRETION, YOU MAY WISH TO INFORM FONOFF OF OUR ADMIRA-  
TION OF AND APPRECIATION FOR HIS WORK.

2. WE SUGGEST THAT YOU REVIEW WITH CHOLLET AND, ALSO,  
WITH DE LACHARRIERE IN LEGAL OFFICE (WHOSE VIEWS MAY BE  
MORE SYMPATHETIC TO OURS) FOLLOWING OBSERVATIONS.

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3. ASSUMING THAT THE CHARTER IS ADOPTED BY AN OVERWHELMING VOTE, WITH A SMALL NUMBER OF GROUP B ABSTENTIONS, COUPLED WITH SOME GROUP B NEGATIVE VOTES ON ART 2 AND ANY OTHER ESPECIALLY OBJECTIONABLE ARTS -- WHICH SEEMS TO BE THE ASSUMPTION CHOLLET EQUALLY ENTERTAINS -- WE WOULD NOT AGREE THAT THE POSITION OF FRANCE, USG OR ANY OTHER STATE THAT VOTED AGAINST ART 2 WILL BE "UNASSAILABLE IN NATIONALIZATION DISPUTES", OR EVEN ADEQUATELY PROTECTED, FOR THE FOLLOWING REASONS:

(A) THAT WOULD MEAN THAT THE CHARTER WOULD BE ADOPTED WITH NO NEGATIVE VOTES ON IT AS A WHOLE;

(B) THE GROUP OF 77 AND COMMUNIST STATES WILL THEREUPON TRUMPET THE CHARTER AS THE NEW INTERNATIONAL LAW GOVERNING THE NEW INTERNATIONAL ECONOMIC ORDER, EMPHASIZING THE LACK OF ANY NEGATIVE VOTE ON THE WHOLE CHARTER;

(C) IN THIS, THEY WOULD FOLLOW UN PRECEDENT. E.G., THE 1960 DECLARATION ON COLONIALISM WAS ADOPTED BY UNGA WITHOUT NEGATIVE VOTES BUT WITH ABSTENTIONS; THE 1965 DECLARATION ON NON-INTERVENTION WITH NO NEGATIVE VOTE AND WITH ONE ABSTENTION; BUT IN BOTH CASES THE DEVELOPING COUNTRIES HAVE BEEN ABLE TO PORTRAY THIS ABSENCE OF OPPOSITION AS SUBSTANTIALLY EQUIVALENT TO UNANIMITY. THE DECLARATION ON COLONIALISM CAME TO BE ACCEPTED AS UN HOLY WRIT, JUST AS IF IT HAD BEEN ADOPTED UNANIMOUSLY; AND THE FRIENDLY RELATIONS DECLARATION FAITHFULLY INCORPORATED PROVISIONS OF THE DECLARATION ON NON-INTERVENTION AS IF THEY HAD BEEN ADOPTED UNANIMOUSLY, AND DECLARES THEM TO BE INTERNATIONAL LAW.

(D) SUCH RESOLUTIONS AND DECLARATIONS COME TO BE REPEATED IN SUBSEQUENT UN RESOLUTIONS, WHICH FAIL TO RECALL OR REITERATE AN INITIAL NEGATIVE VOTE ON A PARA; AND THESE SUBSEQUENT RESOLUTIONS TEND TO BE ADOPTED UNANIMOUSLY, OR AVOIDED ONLY WITH DIFFICULTY (AS CURRENTLY IN RESPECT OF THE RESOLUTIONS OF THE SIXTH SPECIAL SESSION). AS OPINIONS (E.G., THAT OF TANAKA) IN THE INTERNATIONAL COURT OF JUSTICE INDICATE, UNCONTESTED UNGA REPETITION

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OF RESOLUTIONS CAN LEAD TO THEIR CONTENT BEING TREATED AS DECLARATORY OF CUSTOMARY INTERNATIONAL LAW. MEXICO HAS SO ARGUED AT CURRENT SESSION OF UNGA, AND THIS SESSION'S RESOLUTION ON ICJ MAY BE SAID TO LEND SOME SUPPORT TO ITS ARGUMENT. THIS APPROACH IS SUPPORTED BY SOME SCHOLARS, E.G., HIGGINS, "THE DEVELOPMENT OF INTERNATIONAL LAW THROUGH THE POLITICAL ORGANS OF THE UNITED NATIONS."

(E) THUS, WHILE A NEGATIVE VOTE ON ART 2 WOULD CERTAINLY ASSIST A GROUP B MEMBER SHOULD THAT ART BE CITED AGAINST IT IN A NATIONALIZATION DISPUTE, NEVERTHELESS, OVER A PERIOD OF TIME AS THE CHARTER IS INCREASINGLY CITED AS AN AUTHORITATIVE INTERPRETATION OF THE INTERNATIONAL LAW GOVERNING INTERNATIONAL ECONOMIC RELATIONS, THE EFFECTIVENESS OF THAT NEGATIVE VOTE -- INDEED ITS EXISTENCE -- WILL FADE.

(F) HOWEVER, IF, FROM THE OUTSET, A GROUP OF THE MAJOR INDUSTRIALIZED STATES VOTE AGAINST THE CHARTER AS A WHOLE, AND MAINTAIN THAT, BECAUSE OF THEIR NEGATIVE VOTES AS WELL AS OTHER REASONS, IT CANNOT HAVE VALUE AS AN INSTRUMENT DECLARATORY OF INTERNATIONAL LAW, THEIR POSITION ON THE CONTENT OF THE CHARTER IN GENERAL AND IN NATIONALIZATION DISPUTES IN PARTICULAR WILL BE FAR BETTER PROTECTED THAN IT CAN BE BY MERE NEGATIVE VOTES AGAINST OBJECTIONABLE PARAS.

4. IT MAY BE ADDED THAT IT WILL BE SURPRISING IF SOME OTHER ARTS OF THE CHARTER TURN OUT TO BE SATISFACTORY, E.G., WE SEE LITTLE GROUND FOR HOPING THAT THE G-77 WILL ACCEPT A PROPER PROVISION ON SECURITY OF SUPPLY. WE THINK IT LIKELY THAT G-77 WILL CONTINUE TO BLOCK COMMITTEE LANGUAGE ON ARTS OF GREATEST INTEREST TO GOF.

5. FURTHERMORE, ON PARA BY PARA VOTE, GROUP B CAN EVIDENCE ITS FAVORABLE VIEW OF MOST OF CHARTER BY VOTING FOR MOST PARAS.

6. REPLY TO PARA 4 REFTEL BEING SENT SEPTEL.  
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## Message Attributes

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